

EXHIBIT 26



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Transcript of Joseph Zavalishin

Date: April 14, 2017

Case: Corcoran, et al. -v- CVS Pharmacy, Inc.

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WORLDWIDE COURT REPORTING | INTERPRETATION | TRIAL SERVICES

Transcript of Joseph Zavalishin
Conducted on April 14, 2017

1 (1 to 4)

1	3
1 UNITED STATES DISTRICT COURT	1 A P P E A R A N C E S
2 NORTHERN DISTRICT OF CALIFORNIA	2
3 -----x	3 ON BEHALF OF THE PLAINTIFFS:
4 CHRISTOPHER CORCORAN, et al., :	4 RICHARD LEWIS, ESQUIRE
5 Plaintiffs, :	5 HAUSFELD
6 v. :	6 1700 K Street, NW
7 CVS PHARMACY, INC., :	7 Suite 650
8 Defendant. :	8 Washington, DC 20006
9 -----x	9 (202) 540-7200
10	10
11 Videotaped Deposition of JOSEPH ZAVALISHIN	11 ON BEHALF OF THE DEFENDANT:
12 Schaumburg, Illinois	12 GRANT A. GEYERMAN, ESQUIRE
13 Friday, April 14, 2017	13 VIVAAN NEHRU, ESQUIRE
14 10:37 a.m.	14 WILLIAMS & CONNOLLY, LLP
15	15 725 Twelfth Street, NW
16	16 Washington, DC 20005
17	17 (202) 434-5000
18	18
19	19
20	20
21	21
22 Job No.: 140703	22
23 Pages: 1 - 154	23
24 Reported by: Melanie L. Humphrey-Sonntag,	24
25 CSR, RDR, CRR, FAPR	25
2	4
1 Videotaped deposition of JOSEPH ZAVALISHIN, held	1 A P P E A R A N C E S C O N T I N U E D
2 at the location of:	2 ON BEHALF OF THE THIRD PARTY AND WITNESS:
3	3 GARRETT HEENAN, ESQUIRE
4	4 OptumRx
5 OPTUMRx	5 2300 Main Street
6 1600 McConnor Parkway	6 CA134-1000
7 Third Floor	7 Irvine, California 92614
8 Schaumburg, Illinois 60173	8 (949) 252-4386
9 (800) 282-3232	9
10	10 ALSO PRESENT:
11	11 STEPHEN GOETHALS, Videographer
12	12
13 Pursuant to subpoena before Melanie L. Humphrey-	13
14 Sonntag, a Certified Shorthand Reporter, Registered	14
15 Diplomat Reporter, Certified Realtime Reporter, and	15
16 a Notary Public in and for the State of Illinois.	16
17	17
18	18
19	19
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2 (5 to 8)

<p style="text-align: center;">5</p> <p style="text-align: center;">C O N T E N T S</p> <p>EXAMINATION OF JOSEPH ZAVALISHIN PAGE</p> <p>By Mr. Lewis 7</p> <p>By Mr. Geyerman 124</p> <p>By Mr. Lewis 146</p> <p style="text-align: center;">E X H I B I T S</p> <p>(Attached to transcript.)</p> <p>PX EXHIBITS PAGE</p> <p>Exhibit 780 Deposition Subpoena 6</p> <p>Exhibit 781 Zavalishin Declaration, 6</p> <p>2/22/17</p> <p>Exhibit 783 E-Mail Chain With Attachment 114</p> <p>Exhibit 784 E-Mail Chain With Attachment 104</p> <p>Exhibit 785 Contract, Aetna PBM and CVS 29</p> <p>DX EXHIBITS PAGE</p> <p>Exhibit 330 CVS Travel Itinerary, 140</p> <p>11/13/08</p> <p>PREVIOUSLY MARKED EXHIBITS PAGE</p> <p>PX 695 TP Contracts Indexing Form 97</p> <p>PX 728 Health Savings Pass 62</p> <p>Enrollment Form</p> <p style="text-align: center;">6</p>	<p style="text-align: center;">7</p> <p>witness.</p> <p>THE COURT REPORTER: Would you raise your right hand, please.</p> <p>(Witness sworn.)</p> <p>THE COURT REPORTER: Thank you.</p> <p>JOSEPH ZAVALISHIN,</p> <p>having been duly sworn, testified as follows:</p> <p>EXAMINATION BY COUNSEL FOR THE PLAINTIFFS</p> <p>BY MR. LEWIS:</p> <p>Q Good morning, Mr. Zavalishin. Am I pronouncing that correctly?</p> <p>A Zavalishin.</p> <p>Q Zavalishin. Okay.</p> <p>My name is Rich Lewis. I'm a lawyer for the plaintiffs in this case, and I'm going to be taking your deposition this morning. And other counsel may have questions later on in the day.</p> <p>Have you ever had -- have you ever given a deposition before?</p> <p>A Yes, I have.</p> <p>Q About how many times?</p> <p>A Two that I'm aware of.</p> <p>Q All right. And was that related to your employment?</p> <p>A For my employer? It was -- yes.</p> <p style="text-align: center;">8</p>
<p style="text-align: center;">6</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>(PX Exhibits 780 and 781 marked for identification and attached to the transcript.)</p> <p>THE VIDEOGRAPHER: We are on the record. The time is 10:37.</p> <p>This is the beginning of Disk No. 1 in the videotaped deposition of Joseph Zavalishin, in the matter of Corcoran, et al., versus CVS Pharmacy, Inc., in the United States District Court, Northern District of California, Case No. 3:15-cv-03504-YGR.</p> <p>Today's date is April 14th, 2017. The videographer today is Stephen Goethals, representing Planet Depos. This video deposition is taking place at 1600 McConnor Parkway, Schaumburg, Illinois.</p> <p>Would counsel please voice-identify themselves and state whom they represent.</p> <p>MR. LEWIS: Richard Lewis for the plaintiff.</p> <p>MR. GEYERMAN: Grant Geyerman and Vivaan Nehru from Williams & Connolly for the defendant.</p> <p>MR. HEENAN: And Garrett Heenan appearing on behalf of Third Party Optum RX.</p> <p>THE VIDEOGRAPHER: The court reporter today is Melanie Sonntag, Certified Realtime Reporter, representing Planet Depos.</p> <p>Would the reporter please swear in the</p> <p style="text-align: center;">6</p>	<p style="text-align: center;">8</p> <p>Q All right. And can you tell me when the first of those two depositions occurred, approximately?</p> <p>A I'm not sure it was a formal deposition. But I believe I had one -- it was more prep at Walgreens.</p> <p>And then most recently, for Optum RX, it was earlier this year, I believe.</p> <p>Q And can you tell me just generally what the subject of the most recent deposition with Optum RX was?</p> <p>A Yes. It was in relation to the pending acquisition of Rite-Aid by Walgreens.</p> <p>Q All right.</p> <p>In terms of the ground rules for today, probably the same thing as your -- as your prior experience.</p> <p>It's important that each of us listen when the other is talking, and only one of us speak at a time so the court reporter can take everything down. Do you understand that?</p> <p>A Yes.</p> <p>Q And it's important that, if my questions are unclear, you let me know for any reason. If you do answer the question, I'm going to assume that you</p> <p style="text-align: center;">8</p>

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Transcript of Joseph Zavalishin

22 (85 to 88)

Conducted on April 14, 2017

<p style="text-align: right;">85</p> <p>1 A That would have been what's attached in 2 Exhibit A. 3 Q The -- the writings that we've already 4 discussed today? 5 A Uh-huh. 6 Q All right. Now, in paragraph 9 you also say 7 that you had a general awareness that prices charged 8 by pharmacies like CVS and Walgreens in their 9 membership programs were not being submitted as the 10 pharmacy's U&C price. 11 Do you see that? 12 A Yes. 13 Q Other than the writings, what was that 14 general awareness based on? 15 A Conversations. 16 Q Conversations with who? 17 A It would have been with Sharon Edmunds; Tina 18 likely would have been on those calls from the legal 19 side at CVS, as well as Ms. Wingate. 20 Q What about -- you say that you had a general 21 awareness of pharmacies like CVS and Walgreens. 22 What conversations did you have with anybody at 23 Walgreens about this? 24 A It would have been similar dialogue of being 25 made aware that they have a program and how it would</p>	<p style="text-align: right;">87</p> <p>1 MR. HEENAN: Okay. 2 A (Continuing.) When I say "a general 3 awareness," within the industry at this point in 4 time, what Walmart did was market disruptive, market 5 changing. 6 Wal- -- Walmart came out with an 7 announcement that they would have a set of drugs -- 8 \$4 for a 30-day fill, \$9, \$10 -- whatever the exact 9 amount was; I don't recall -- for 90-day fills. 10 And in the retail and pharmacy benefit 11 management space, that was huge. That was 12 disruptive. As such, reactionary, many other 13 retailers took actions to also attract 14 price-sensitive shoppers, whether it was the Health 15 Savings Pass at CVS, whether it was the savings 16 club, savings card at Walgreens. Many regional and 17 local grocers either did the same exact thing of not 18 having a program, in which case it was anybody could 19 just walk in for a \$4, \$10 pricing, in which case 20 those would have come through as a U&C. 21 Some grocers -- I don't recall by name -- 22 may have rolled out a similar program where you had 23 to join and pay a fee to join. This was 24 transformative in the retail space. 25 And on the payer side of the equation within</p>
<p style="text-align: right;">86</p> <p>1 be a membership access fee that would afford the 2 discounts being provided to those who enroll. 3 Q All right. Specifically when did you have a 4 conversation like that with someone from Walgreens? 5 MR. HEENAN: At this point -- I know we 6 talked a little bit about Walgreens before the 7 break, and, obviously, Mr. Zavalishin has worked at 8 Walgreens and those points were made. 9 But, you know, I don't know that -- I mean, 10 based on the declaration and the subject of what 11 this deposition is, I think we're going a little bit 12 afield here now about Walgreens. 13 MR. LEWIS: I just want to ask about what he 14 wrote in paragraph 9 about Walgreens. That's all. 15 Q Who did you talk to -- when you make that 16 reference to Walgreens in paragraph 9, who at 17 Walgreens did you speak to and when? 18 MR. GEYERMAN: He doesn't say in the 19 declaration he spoke to anybody at Walgreens. 20 MR. HEENAN: It's an Aetna-related 21 paragraph. 22 A When I say a -- 23 MR. HEENAN: Go ahead. 24 A (Continuing.) -- "general awareness" -- 25 A THE WITNESS: I can answer this.</p>	<p style="text-align: right;">88</p> <p>1 pharmacy benefit managers, when you consider the 2 billions of dollars of year -- a year that transact, 3 this had a level of awareness. Everybody saw it. 4 Everybody knew about it. Everybody discussed it. 5 And everybody had eyes wide open as to what 6 these programs were, how they functioned, and 7 what -- their long-term impact. 8 So when I say I had a general awareness, 9 that's where it's coming from. As a consumer 10 walking into a Walgreens, as a consumer walking into 11 a CVS, seeing the commercials on TV or in print, 12 there was a high degree and level of awareness. 13 And as somebody who -- myself -- is highly 14 attuned to the industry, you know these things; you 15 pay attention to them. And that's why I say I have 16 a good, general level of awareness. 17 I would liken it to somebody who is in, you 18 know, aviation and that's their industry. And if 19 they, for many years, worked at a -- a United or an 20 American Airlines or a US Air and all of a sudden 21 some low-cost Southwest started to emerge and eat 22 their market share, they would have a general 23 awareness of that business model, would have a 24 general awareness of what's going on. 25 So it was my job, my responsibility, to know</p>

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39 (153 to 156)

153

1 A I believe, ultimately, it all reported up to
2 the same legal entity of Aetna, but I don't know in
3 terms of subholding companies, structure. I didn't
4 have visibility into that.

5 Q What was the name of that -- of that entity
6 at the top that owned both of them?

7 A I don't recall the exact legal entity. If
8 there's multiple corporations set up in multiple
9 states and -- you would have to go back and explore
10 that. I don't know.

11 Q Were there any rules in place when you were
12 at Aetna preventing you, as a member of the PBM
13 side, to talk to persons on the health plan side
14 about the definition of "U&C"?

15 A Not that I recall.

16 Q Were there any conflicts of interest that
17 you were aware of that would prevent that?

18 A Not that I recall.

19 MR. LEWIS: Thank you.

20 Nothing further.

21 MR. GEYERMAN: Nothing further from us.

22 Thank you very much for your time.

23 THE VIDEOGRAPHER: Off the record. The time
24 is 1424.

25 (Off the record at 2:24 p.m.)

154

1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

2

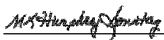
3 I, Melanie L. Humphrey-Sonntag, Certified
4 Shorthand Reporter No. 084-004299, CSR, RDR, CRR,
5 CRC, FAPR, and a Notary Public in and for the County
6 of Kane, State of Illinois, the officer before whom
7 the foregoing deposition was taken, do hereby
8 certify that the foregoing transcript is a true and
9 correct record of the testimony given; that said
10 testimony was taken by me stenographically and
11 thereafter reduced to typewriting under my
12 direction; that reading and signing was not
13 requested; and that I am neither counsel for,
14 related to, nor employed by any of the parties to
15 this case and have no interest, financial or
16 otherwise, in its outcome.

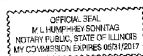
17 IN WITNESS WHEREOF, I have hereunto set my
18 hand and affixed my notarial seal this 27th day of
19 April, 2017.

20

21 My commission expires: May 31, 2017

22

23 
24 Notary Public in and for the
25 State of Illinois



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